HONOURABLE SRI JUSTICE K.C. BHANU

W.P.No.15945 of 2002

Dated: 5th August, 2005

Between:

S.M.Basha, Conductor

S/o.S.Basumia, Aged 40 years

R/o.Door No.5/479, Ravindranagar

Cuddapah District .. Petitioner

And

The A.P.S.R.T.C. rep. by its Chairman

& Managing Director, Musheerabad, Hyderabad

and others .. Respondents

HONOURABLE SRI JUSTICE K.C. BHANU

W.P.No.15945 of 2002

ORAL ORDER:

This writ petition is filed seeking a Mandamus declaring the action of the 2nd respondent in reinstating the petitioner as Conductor afresh without giving continuity of service and without giving full backwages

and attendant benefits vide Proceedings No.DSP/876(56)/2000-RM'C', dated 16.12.2000 as arbitrary and illegal.

The facts relevant for appreciating the controversy may be briefly delineated as follows:

The petitioner was appointed as Conductor in the respondents-corporation on 27.6.1986. When a sudden check was exercised on 18.8.1999, at Stage No.11, the checking officials found the petitioner committing some cash and ticket irregularities. A Charge sheet, dated 3.9.1999 was issued to him and subsequently, he was placed under suspension. He submitted an explanation on 9.9.1999, but the 3rd respondent, without considering it, appointed an Enquiry Officer, who conducted a detailed enquiry and submitted a report. Based on the report, the 3rd respondent issued show cause notice, dated 4.2.2000 indicating the prospect of removal of his service. When the petitioner submitted his explanation to the show cause notice, the 3rd respondent, without considering it, issued Proceedings, dated 18.2.2000 ordering removal of his service. Aggrieved by that, the petitioner preferred an appeal and the same was rejected by the appellate authority, vide Proceedings, dated 27.6.2000. Challenging the same, he filed a Review Petition before the 2nd respondent, who also rejected it, vide Proceedings, dated 21.7.2000. Aggrieved by the same, the petitioner filed W.P.No.17111 of 2000 seeking reinstatement with continuity of service and other attendant benefits. This Court, allowed the writ petition by setting aside the impugned proceedings passed by the 2nd and 3rd respondents and remitted the matter to the authorities for reconsideration of the case on the question of levying lesser punishment. On receiving the copy of the order, the 2nd respondent, vide Proceedings, dated 16.12.2000, reinstated the petitioner as Conductor, Grade-III, imposing severe punishment of appointing him afresh. Hence, this writ petition has been filed.

Heard the learned counsel for the petitioner and the learned standing

counsel for the respondents and perused the material placed on record.

The learned counsel for the petitioner has vehemently contended that the charges framed against the petitioner are not based on any evidence, and the petitioner has put in 19 years of service in the respondents-Corporation and the punishment imposed by the revisional authority is disproportionate to the proved misconduct, and it is not a case of misappropriation of cash, and therefore, she prays to allow the writ petition.

On the other hand, the learned standing counsel for the respondents has contended that it is a case of misappropriation of cash and they have taken note of all the past records of the petitioner which clearly indicate that the petitioner was ordered to be reinstated into service as a fresh candidate.

For certain irregularities committed by the petitioner the following two charges have been framed:

1. *"For having allowed milk cans E.5 from Chimalapenta to Cuddapah, i.e. ex-stages 10/11 to 16, on 18.8.1999 and failed to issue luggage tickets, even though collected the requisite luggage fare from the consignee at Chimalapenta itself which is a serious misconduct under Reg.28(x) of A.P.S.R.T.C. Employees (Conduct) Reg. 1963.*

2. *For having permitted milk cans E.5 as unaccompanied luggage to carry from Chimalapenta to Cuddapah without permit on 18.8.1999, on the route Pulivendula – Cuddapah, which is a misconduct under Reg.28 (xxxii) of APSRTC Employees (conduct) Reg. 1963."*

The petitioner was called upon to submit his explanation. As the explanation was not found to be satisfactory, a regular departmental enquiry was conducted. The Enquiry Officer submitted a report to the disciplinary authority. A show cause notice, dated 4.2.2000 was issued to the petitioner as to why he should not be removed from

service, for which, the petitioner gave an explanation and the disciplinary authority, by his Proceedings, dated 18.2.2000, ordered removal of the petitioner from service. Challenging the same, the petitioner filed an appeal before the appellate authority, and it was rejected. Thereafter, the petitioner filed a Review Petition before the 2nd respondent, which was also rejected. Challenging the same, W.P.No.17111 of 2000 was filed, and this Court, by an order, dated 8.11.2000, allowed the writ petition and remanded the matter to the authorities for reconsideration of the case on the question of levying lesser punishment. Thereafter, the impugned proceedings, dated 16.12.2000 came to be passed appointing the petitioner as Conductor Grade-III afresh. Challenging the same, the present writ petition has been filed.

Even according to the petitioner, the Enquiry Officer conducted a detailed enquiry and submitted a report. This Court also observed that the charge of misappropriation appears to be trivial in nature. Now, according to the submissions made by the learned counsel for the petitioner, it is only with reference to the imposition of punishment which is disproportion to the proved misconduct. According to the Enquiry Officer's findings, the petitioner did not issue the luggage tickets to the passengers, therefore, he was found guilty of the misconduct alleged against him. There cannot be any trivial or large-scale misappropriation. When a person committed misappropriation, it is a serious misconduct. In case of misappropriation, the employee has to be dealt with an iron hand and maximum punishment has to be imposed. In pursuance of the observations made by this Court, the respondents have taken a lenient view in appointing the petitioner as Conductor afresh. No doubt, according to the learned standing counsel, the conduct of the petitioner is such that he was removed from service on two occasions earlier and on several occasions, he was imposed punishment, but that is not evident from the material placed on record. In spite of the fact that the petitioner committed misappropriation, the 2nd respondent took sympathy in ordering re-appointment, but the question of treating the services rendered by the

petitioner as continuity of service for terminal benefits does not arise. Since the punishment is in proportion to the proved misconduct, the impugned proceedings do not warrant interference.

For the foregoing reasons, this Court does not find any merit in the writ petition and the same is accordingly dismissed. In the circumstances of the case, there shall be no order as to costs.

(K.C. BHANU, J.)

5th August, 2005

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